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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/445,043	03/20/2000	IAN BAIRD-SMITH	350013-65	9395

7590

10/21/2003

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

24

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/445,043

Applicant(s)

BAIRD-SMITH ET AL.

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6,8-11,13-18 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,8-11,13-18 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1,3,4,6,8-18, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

The language of the claims and claim 1 in particular is extremely awkward. For instance, "for an open-ended container, and an open-ended container" is redundant and awkward.

Since the claims now positively set forth the container as part of the claimed invention, "said container" should be used throughout the claims.

In claim 1, line 6, "the a container" appears to be incorrectly setting forth the structure.

In claim 1, line 14, is the "a container" the same as the claimed container in line 2 or a different container?

The phrase "the cam follower" is inconsistent with "a cam and follower pair" previously set forth in the claim.

Claim 1 recites the limitation "the cam and follower" in lines 15 and 16. There is insufficient antecedent basis for this limitation in the claim since more than one cam and follower pair have been previously set forth.

The phrase "movement between the cam and follower ... causing the " is repeated twice in claim 1.

Claim 3 recites the limitation "the cam and follower" in line 2. There is insufficient antecedent basis for this limitation in the claim since more than one cam and follower pair have been previously set forth.

Art Unit: 3727

Claim 14 recites the limitation "the cam and follower" in line 8. There is insufficient antecedent basis for this limitation in the claim since more than one cam and follower pair have been previously set forth.

The claims have been amended to positively recite a container. Thus, it is unclear in claim 10 if the "generally cylindrical container neck" is that of the container in claim 1 or a different container.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1,3,4,6,8-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroshi (JP Application 06219464).

Hiroshi teaches a can having a flexible member 3 secured to the can end, a rigid cap 5 having a laminar member and a skirt 7 extending downwardly from a peripheral edge thereof, and a deformable ring member 6 secured to the rigid cap (see fig. 8).

Hiroshi is silent regarding the spacing between the laminar member and the flexible membrane.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar member and the flexible membrane less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

Wherein it is asserted pre-stressing occurs upon application of pressure to the membrane, the membrane of Hiroshi is pre-stressed.

Art Unit: 3727

Regarding claim 4, the outer portion 2 of the can comprising the screw threads has an upper edge that is considered to be a flange.

Regarding claim 9, Hiroshi teaches the claimed invention except for the flexible membrane being made of a metal foil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flexible membrane of metal foil, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroshi in view of Hardt (US 4,328,905).

Hiroshi teaches the claimed closure except for a pull tab hingedly attached to the membrane. Wherein it is asserted pre-stressing occurs upon application of pressure to the membrane, the membrane of Hiroshi is pre-stressed.

Hardt teaches a membrane closure having a pull tab hingedly attached thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a hingedly attached pull tab to the membrane of Hiroshi. Doing so would provide a graspable member to allow for easy removal of the membrane from a container mouth.

5. Claims 1,3,4,6,9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shull (US 4,531,649).

Shull is silent regarding the spacing between the laminar member and the flexible membrane.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar member and the flexible membrane less than

Art Unit: 3727

the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

Regarding claim 11, the unsecured end of the membrane functions as a pull tab and is hingedly attached to the membrane radially beyond the end of the container neck.

6. Claims 1,3,6,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Revill (GB 2,132,392).

Revill is silent regarding the spacing between the laminar member and the flexible membrane.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the spacing between the laminar member and the flexible membrane less than the maximum possible extension of the deformable member towards the laminar member to prevent rupture of the flexible member due to excessive pressure within the closed can.

Response to Arguments

7. Applicant's arguments filed October 15, 2002 have been fully considered but they are not persuasive.

Regarding applicant's assertion that the prior art does not teach the spacing between the laminar member and the flexible membrane, it is maintained by the examiner that it is well established in the prior art to provide a spacing between a lid top wall and an uppermost surface of a container mouth. Wherein a flexible sealing membrane is applied to the uppermost surface of a container mouth, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a spacing between the flexible sealing member and a laminar member of the cap such that the membrane would be allowed to flex, yet would not flex beyond a rupturing point.

Art Unit: 3727

Regarding applicant's remarks on page 7 regarding the teaching of Hiroshi, Hiroshi states it is concerned with "treatment under high pressure at temperatures of 100° C or over" (see paragraph 0003). Wherein Hiroshi is specifically concerned with maintaining the seal during retort, the pressure must inherently be building up within the container. (contrary to applicant's assertion). Thus, one of ordinary skill in the art would be concerned with spacing of the membrane from the lid to prevent rupture of the seal membrane.

Wherein no further remarks are specifically made to the other prior art rejections, no other comments are presented in this Office action.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to

Art Unit: 3727

a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet.

Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

10. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-_____ on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
October 20, 2003


Robin A. Hylton
Primary Examiner
GAU 3727